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Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PETER R. FADER
dba Urchin Capital Partners
dba Urchin Partners LLC,

Debtor.

Case No.: 08-30119-DM

Chapter 7

**PACHULSKI STANG ZIEHL & JONES
LLP'S REPLY TO JOHN GADDY'S
OBJECTION TO FIRST INTERIM
FEE APPLICATION**

Hearing Date:

Date: February 3, 2023
Time: 10:30 AM
Place: Courtcall/Videoconference
Judge: Honorable Dennis Montali

Pachulski Stang Ziehl & Jones LLP (“**PSZJ**”) herein replies to creditor John Gaddy’s Objection (“**Objection**”) to PSZJ’s *First Interim Application for Allowance and Payment of Compensation and Reimbursement of Expenses for the Period September 16, 2019 through November 28, 2022* filed on January 11, 2023 (“**Application**”)¹.

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¹ Capitalized terms not defined herein shall have the same meaning ascribe to them in the Application or in the *Notice of Hearing on the First Interim Applications of (1) E. Lynn Schoenmann, Chapter 7 Trustee (2) Pachulski Stang Ziehl & Jones LLP, Counsel to the Trustee, and (3) Bachecki Crom & Company, Accountants to the Trustee (“Notice”)*.

I.

INTRODUCTION

Creditor John Gaddy (“**Gaddy**”) seeks to reduce PSZJ’s fees by nearly 35% based on unsupported allegations of wrongdoing by the Trustee’s counsel and PSZJ’s purportedly ‘extremely excessive’ hourly rates. Mr. Gaddy is the only party who has filed an objection to the Application and who, for reasons that are not entirely clear, relies on rates charged in non-bankruptcy matters from over twenty years ago as his benchmark for what PSZJ’s rates should be in this case. The United States Trustee who is familiar with the rates charged by bankruptcy counsel in this district did not file an objection to the Application or to any of the fee applications filed in this case.

Mr. Gaddy has not articulated a legitimate basis for a rate reduction.

II.

FEES REQUESTED BY PSJZ ARE REASONABLE AND SHOULD BE AWARDED

The fees sought by PSZJ are reasonable and necessary and should be approved as requested. PSZJ is a premier national insolvency firm (*see* <https://www.pszjlaw.com/about-presence.html>) and commonly obtains approval for its regular rate structure irrespective of the jurisdiction. *See, e.g., In re Easterday Ranches, Inc.*, Case No. 21-00141 (Bankr. E.D. Wash. Feb. 1, 2021) (PSZJ employment approved at standard hourly rates); *In re Carbonlite Holdings LLC*, Case No. 21-10527 (Bankr. D. Del. Mar. 8, 2021) (same); *In re Spherature Investments LLC*, Case No. 20-42492 (Bankr. E.D. Tex. March 15, 2021) (same); *In re Rancher's Legacy Meat Co.*, Case No. 19-32928 (Bankr. D. Minn. December 23, 2020) (same); *In re SD-Charlotte, LLC*, Case No. 20-30149 (Bankr. W.D.N.C. October 1, 2020) (same); *In re It's Sugar FL I LLC*, Case No. 20-20259 (Bankr. S.D. Fla. June 21, 2021) (same). With ten fellows of the American College of Bankruptcy in its ranks, for example, and countless accolades achieved by virtually all of its members, PSZJ has a different profile than most law firms, not to mention most insolvency firms.

PSZJ's rates were disclosed early in this case when PSZJ filed its employment application on September 19, 2019. [Docket No. 47]. No objections were asserted to PSZJ's retention and the Court approved the retention on September 26, 2019. [Docket No. 50].

1 In the Northern and Central District of California, PSZJ has filed fee applications for its
 2 services, including litigation, in at least 23 cases over the last eight years. PSZJ has one set of
 3 standard hourly rates for its professionals that it applies to all matters. In most of these cases PSZJ's
 4 standard hourly rates were approved and applied by the Court. Where caps, discounts or blended
 5 rates were applied, that has been footnoted. The chart below sets forth the case number and name of
 6 each case, the presiding judge, the date of the most recent fee application filed by PSZJ in each case,
 7 the page number in each such application setting forth PSZJ's rate schedule, and the docket number
 8 of the order approving an award based on those rates, on either an interim or final basis:

9	Case Name N.D. Cal	Case No.	Judge	PSZJ Latest Fee App	Fee App. Page No. With Rates	Order Approving PSZJ Latest Fee App
11	Watsonville Hospital	21-51477	Hon. M. Elaine Hammond	10/24/22 Dkt 816	154	12/05/22 Dkt. 873
12	Professional Fin. Investors ²	20-30604	Hon. Hannah L. Blumenstiel	01/20/22 Dkt. 1083	55	04/04/22 Dkt. 1372
13	Imperial Toy	19-52335	Hon. M. Elaine Hammond	03/18/20 Dkt. 216	12	04/17/20 Dkt. 237
14	Munchery Inc. ³	19-30232	Hon. Hannah L. Blumenstiel	09/22/20 Dkt. 404	16	10/13/20 Dkt 412
15	Home Loan Center	19-51455	Hon. M. Elaine Hammond	01/31/20 Dkt. 140	19	12/30/20 Dkt. 289
16	Cross Channel, Inc.	18-31182	Hon. Hannah L. Blumenstiel	12/08/20 Dkt. 35	Exhibit A, 1	03/04/21 Dkt. 44
17	Sedgwick LLP	18-31087	Hon. Hannah L. Blumenstiel	04/09/20 Dkt 377	18	04/30/20 Dkt. 389
18	Mariya Sergeevna Ruchka	18-30002	Hon. Dennis Montali	05/20/20 Dkt. 185	Exhibit A, 1	06/26/20 Dkt. 193
19	New Zoom	15-31141	Hon. Hannah L. Blumenstiel	01/02/16 Dkt. 320	14	03/11/16 Dkt. 341
20	Rdio, Inc. ⁴	15-31430	Hon. Dennis Montali	10/27/16 Dkt. 444	17	11/15/15 Dkt. 458
21	Waukeen Quandrico McCoy	14-30381	Hon. Hannah L. Blumenstiel	07/25/17 Dkt 520	Exhibit A, 1	10/10/17 Dkt. 530

27 ² Customary rates were discounted by 10% in this committee representation as most of the creditors were victims of a Ponzi scheme.

28 ³ Blended rates were used in lieu of standard hourly rates.

⁴ Blended rates were used in lieu of standard hourly rates.

	Case Name C.D. Cal.	Case No.	Judge	PSZJ Latest Fee App	Fee App. Page No. With Rates	Order Approving PSZJ Latest Fee App
1	Hytera Communications	20-11507	Hon. Erithe A. Smith	04/07/22 Dkt. 724	467	06/25/22 Dkt. 764
2	Bridgemark Corp.	20-10143	Hon. Theodor Albert	09/17/21 Dkt. 584	159	10/15/21 Dkt. 619
3	Yueling Jia ⁵	19-24804	Hon. Vincent P. Zurzolo	07/16/20 Dkt. 832	41	08/11/20 Dkt. 874
4	HVI Cat Canyon	19-32857 ⁶	Hon. Harlin D. Hale	11/13/20 Dkt. 1453	19	12/14/20 Dkt. 1514
5	Verity Health System ⁷	18-20151	Hon. Ernest M. Robles	11/03/20 Dkt. 6203	216	12/16/20 Dkt. 6328
6	B&B Liquidating ⁸	18-11744	Hon. Neil W. Bason	11/20/18 Dkt. 256	107	12/12/18 Dkt. 272
7	Cloudbreak Entertainment	15-28443	Hon. Neil W. Bason	08/30/16 Dkt. 113	72	12/08/16 Dkt. 180
8	Freedom Communications	15-15311	Hon. Mark Wallace	05/16/16 Dkt. 622	Exhibit A, 2-3	06/13/16 Dkt. 680
9	Woodforest Square	14-12682	Hon. Maureen Tighe	07/01/15 Dkt. 216	31	08/03/15 Dkt. 227
10	S.B. Restaurant Co. ⁹	14-13778	Hon. Erithe Smith	01/15/16 Dkt. 582	161	02/17/16 Dkt. 609
11	KSL Media, Inc	13-15929	Hon. Martin R. Barash	09/14/16 Dkt. 2320	39	10/27/16 Dkt. 2420
12	Estate Financial, Inc.	08-11457	Hon. Peter Carroll	01/20/16 Dkt. 3591	29	03/14/16 Dkt. 3633

16 Public policy favors permitting parties to retain professionals of their choice. *In re Christ's
17 Church of Golden Rule*, 157 F.2d 910, 911(9th Cir. 1946) (“The relationship between attorney and
18 client is highly confidential, demanding personal faith and confidence in order that they may work
19 together harmoniously. Only in the rarest cases should the trustee be deprived of the privilege of
20 selecting his own counsel . . .”) (quoting *In re Mandell*, 69 F.2d 830, 831 (2d Cir.1934)); *Smith v.
21 Geltzer*, 507 F.3d 64, 71 (2d Cir. 2007) (bankruptcy court should interfere with the trustee's choice
22 of counsel “[o]nly in the rarest cases,” such as when the proposed attorney has a conflict of
23 interest, or when it is clear that “the best interest of the estate” would not be served by the trustee's
24 choice) (quoting *Mandell*); 3 COLLIER ON BANKRUPTCY ¶ 327.04 (Alan W. Resnick & Harry J.
25 Sommer eds., 16th ed.) (in the absence of a legitimate or material conflict of interest, “failure to
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27 ⁵ Customary rates were discounted by 10% in this representation.

28 ⁶ Venue for this case was subsequently transferred to the Southern District of New York.

⁷ Customary rates were discounted by 15% in light of the debtors' non-profit status.

⁸ Blended rates were used in lieu of standard hourly rates.

⁹ Blended rates were used in lieu of standard hourly rates.

1 approve the trustee's selection [of counsel] in the absence of good reason has been called an abuse of
2 judicial discretion"); *In re Malhotra*, No. 2:16-bk-02608-DPC, 2016 Bankr. LEXIS 2521, *8 (Bankr.
3 D. Ariz. July 7, 2016) (same, citing *Christ's Church, Mandell* and *Collier's*); *In re Shore*, No. 03-
4 43072, 2004 Bankr. LEXIS 1432, at *11 (Bankr. D. Kan. May 14, 2004) ("a debtor's choice of
5 counsel is entitled to great deference").

6 Mr. Gaddy has offered no evidence or reason for reducing PSZJ's previously approved
7 standard hourly rates. To do so would effectively deny the Trustee the ability to retain PSZJ in
8 future chapter 7 cases.

9 The compensation requested is reasonable and appropriate in light of the nature, extent, and
10 value of such services to the Trustee which culminated in the settlement of decades old claims based
11 on oral agreements for \$5 million dollars. PSZJ also wrote off approximately \$11,069.00 in fees.
12 As noted in the Application, PSZJ had significant risk of non-payment for its services in this case
13 and its payment was entirely contingent on the estate's recovery on the Claims. The terms of PSZJ's
14 retention was a contingent right to get paid capped at its hourly rates. The Claims were the only
15 asset of the estate and were based on decades old oral agreements. The credibility and veracity of
16 the Trustee's key witness, the Debtor, was challenged and the parties against whom the Claims were
17 asserted had numerous defenses to the Claims which had the potential of diminishing or eliminating
18 the Trustee's ability to recover anything.

19 For these reasons, the Objection should be overruled and the fees and expenses sought by
20 PSZJ should be approved.

21 **III.**

22 **ALLEGATIONS OF WRONGDOING ARE FALSE**

23 Mr. Gaddy falsely accuses the Trustee's professionals of engaging in 'price fixing'. On page
24 5 of the Objection Mr. Gaddy states, "The 4 lawyers in this case are price fixing the standard
25 contingency fee agreement against the unsecured creditors" (Objection, pg 5). While parties
26 appearing without counsel are sometimes given deference due to their unfamiliarity with the practice
27 of law, Mr. Gaddy admits to holding a law license (Objection, pg. 12 "I have been a member of the
28 California bar since 1977"). He should therefore be held to a higher standard of conduct.

1 In any event, there is no evidence to support the accusation of ‘price fixing’. The Trustee’s
2 special litigation counsel - Meade Firm P.C. and Dontzin Nagy & Fleissig LLP – were retained on a
3 contingency fee basis which was approved by the Court. [Docket No. 53]. PSZJ’s retention was
4 approved on an hourly basis and it has not sought reimbursement of its fees in excess of its normal
5 hourly rates or agreed to share any fees that may be awarded to it. (Application, pgs. 10 and 13).

6 None of the Trustee’s professionals engaged in conspiratorial conduct to deprive creditors of
7 a distribution. As noted above, the Trustee’s professionals undertook this representation knowing
8 that the risk of non-payment of their fees would be high considering the potential defenses and other
9 challenges that the Claims presented.

10 Lastly, the Objection suggests that PSZJ improperly attempted to conceal the contents of the
11 Fee Applications from Mr. Gaddy. Rule 2002(a)(6) of the Federal Rules of Bankruptcy Procedure
12 requires 21 days’ notice to all creditors of “*a hearing* on any entity’s request for compensation or
13 reimbursement of expenses if the request exceeds \$1,000[.]” Fed. R. Bankr. P. 2002(a)(6) (emphasis
14 added). There is no requirement that the application be served on every creditor on the matrix.
15 Further, Rule 2002(c)(2) only requires that a “notice of a hearing on an application for compensation
16 or reimbursement of expenses required by subdivision (a)(6) of this rule shall identify the applicant
17 and the amounts requested.” Fed. R. Bankr. P. 2002(c)(6). PSZJ complied with these requirements
18 as evidenced by the contents of the Notice.

19 Mr. Gaddy admits that he received the Notice and in fact, most of its contents were repeated
20 verbatim in the Objection. (*See*, Objection pgs. 3 and 4). PSZJ also provided copies of the Fee
21 Applications to Mr. Gaddy on January 18, 2023 promptly after he requested them. There was no
22 attempt to conceal information from Mr. Gaddy.

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1 Accordingly, PSZJ submits that the Objection should be overruled in its entirety and the fees
2 and expense reimbursements requested in the Application be approved.

3 Respectfully Submitted,

4 Dated: February 1, 2023

PACHULSKI STANG ZIEHL & JONES LLP

5 By: /s/ Miriam Manning
6 Kenneth H. Brown
7 Miriam Manning
8 Counsel for E. Lynn Schoenmann,
9 Chapter 7 Trustee